IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DONNA J. THOMAS, ADMINISTRATRIX OF THE ESTATE OF ANDRE THOMAS, DECEASED, ON BEHALF OF THE ESTATE OF ANDRE THOMAS,	)	
Plaintiff	)	Civil Action No. 09-996
V.	)	Judge Nora Barry Fischer
BOROUGH OF SWISSVALE, DEBRA LYNN INDOVINA-AKERLY, JUSTIN LEE KEENAN and GARY DICKSON,	)	**JURY TRIAL DEMANDED**
Defendants	)	

DEPOSITION TRANSCRIPT EXCERPTS

OF

CYRIL H. WECHT, M.D., J.D.

EXHIBIT 4

TO

PLAINTIFF'S MOTION TO EXCLUDE EXPERT TESTIMONY OF DEBORAH MASH, PH.D. AND ANY EVIDENCE REGARDING AN ALLEGED CONDITION REFERRED TO AS EITHER EXCITED DELIRIUM, AGITATED DELIRIUM AND/OR DRUG-INDUCED DELIRIUM

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

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DONNA J. THOMAS, Administratrix) of the Estate of Andre Thomas,) Deceased, on behalf of the) Estate of Andre Thomas,)
)
Plaintiff,)
)
-vs-) Civil Action No.
) 2:09-cv-00996-NBF
BOROUGH OF SWISSVALE; DEBRA) LYNN INDOVINA-AKERLY; JUSTIN) LEE KEENAN; and GARY DICKSON,)
)
Defendants.)

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DEPOSITION OF: CYRIL H. WECHT, M.D., J.D.

- - - -

DATE: June 2, 2011
Thursday, 10:34 a.m.

LOCATION: 1119 Penn Avenue
Suite 404
Pittsburgh, PA 15222

TAKEN BY: Defendants

Job No. AMB182489

REPORTED BY: Sherry Dean
Notary Public
Reference No. SD22786

didn't limit it to their case; I talked more broadly about the fact that forensic pathologists working in coroner and medical examiners' offices must remain independent, must be objective, and must not be considered in their own minds nor allow themselves to be so considered as an arm of the prosecution in criminal cases. So that was the essence of my discussion.

Q. Now, how did that relate to the topic of excited delirium?

A. The way it relates to excited delirium is that -- and it gets back to my letter -- is that I believe, to a very great extent, medical examiners in the United States of America are extremely reluctant to attribute a death to the physical actions of police officers and reach out for excited delirium, which has become a favorite diagnosis of theirs. Although, it has not been recognized by the American Medical Association or the American Psychiatric Association and has been soundly criticized and pretty much condemned by Canadian law enforcement and Canadian scientists and so on.

So that's how it fit it in; talking

about the need for independence and pointing out that the purpose or one of the responsibilities of a medical examiner is to be scientifically objective. This is something that I've talked about over the years; that it's understandable that coroners, medical examiners, you work with police officers; they're your friends. They take care of your wife's traffic ticket, your son's marijuana charge, you have lunch with them, and so on, and you never even see a defense attorney until you come to court. Because the defense attorneys, too often, are negligent themselves in not insisting upon a meeting with the forensic pathologist who did an autopsy in a murder case, as they would in some other matter.

So those are the kinds of things I've talked about. So how does it relate? I think that medical examiners, a combination of that -- and it's a generalization -- relationship with law enforcement officers whom they deal with and see all the time in larger metropolitan areas literally everyday, coupled with, when it comes to Tasers, the extreme

pressures and very aggressive approaches undertaken by the TASER company.

Putting that together has resulted in a reaching out for the diagnosis of excited delirium or agitated delirium, ignoring Tasers, ignoring physical altercations, ignoring physical evidence of body weights of one or more police officers on a victim resulting in positional asphyxiation; totally ignoring them; not even considering them as contributing factors, if not the actual cause of death.

So I'm giving you a long answer because I want to be candid with you and answer your question and also explain how I feel about these matters; but specifically, then, how it relates to excited delirium.

Q. Let me ask you this, because here's what I'm hearing and you correct me if I'm wrong. I'm hearing from you that as far as Dr. Cyril Wecht is concerned, whether you call it excited delirium or agitated delirium, that term is not a valid scientific or medical diagnosis.

A. Not completely. It's not an officially recognized term by two groups in this country that are much, much larger than forensic

pathologists and less personally involved with law enforcement. Is there such a thing, from a pathophysiological standpoint, as somebody becoming excited, becoming agitated, from cocaine, from schizophrenia, or some other neurological disorder, or even sometimes from other drugs? Yes, I recognize that. And can that lead to aberrant, socially unacceptable behavior? Can that play a role, then, in the individual's cardiovascular and respiratory status? And can it contribute to events in his own body? And can it indirectly lead to involvement by third parties, law enforcement officers, and others? Well, I recognize all of that. Of course, you don't have to be a doctor to understand and appreciate that.

Do I believe that excited delirium has been, in some way, scientifically proven? No, I do not, because it is conjectural; there is no way to prove it. I'm not being critical of my colleagues; I'm just saying you cannot look at tissues grossly or microscopically and say here is a case of excited delirium, like you can myocardial infarction, pulmonary embolism, a cerebral vascular accident,

traumatic lacerations of the liver with hemoperitoneum, et cetera, et cetera. That kind of scientific corroboration has not yet occurred.

Q. Can you do what you say you can't do in an autopsy setting and come up with excited -- can you do that as it relates to positional asphyxia?

A. Yes, if you have evidence of either usually two or more police officers subduing an individual --

Q. Excuse me, if I can, Doctor. I'm trying to suggest that -- so that you and I are on the same page -- I thought you were saying with regard to a scientific or medical diagnosis of excited or agitated delirium that a pathologist cannot go into an autopsy setting and based strictly upon his findings in that room, based upon that autopsy examination alone, he cannot come out with a valid cause of death of excited delirium.

MR. MESSER: I'm going to object to the question. I don't believe that was the testimony that Dr. Wecht offered.

BY MR. HAMILTON:

Q. Okay.
A. -- just so you'll know that what I've said is accurate.
Q. And if you go back to page 11 of 14 on the Shakir autopsy where he discusses Musculoskeletal System, you'll see about the third line down that the vertebral bodies are not remarkable; no hemorrhages are noted in the paravertebral muscles; the sternum, ribs, and spine exhibit the usual bone density and marrow. Correct?
A. That's what he says; yes, that's correct.
Q. Do you disagree with that?
A. Yes, if you'll look at my autopsy beginning at the bottom of page ten -- I'll wait until you get there.
Q. Okay.
A. Now, there was one more sentence in Dr. Shakir's report under Musculoskeletal System which does reflect a 6 by 3 centimeter area of subcutaneous hemorrhage at the middle of the lower back. So that's two and two-fifths of an inch by one and one-fifth of an inch. So he does describe that hemorrhage.
I found some staining along the lower

thoracic and lumbar vertebrae, beginning at the bottom of page ten, and when I removed those with an electric saw I found evidence of some hemorrhage in the periosteum. The periosteum is a very tightly invested fibrous tissue. Peri, around; osteum, bone. And it did not go into the vertebrae themselves, but there was some hemorrhage.

And then I saw that hemorrhage which evidently is the one he's referring to. He measured it 6 by 3, and I measured it as 5.5 by 2.7; pretty darn close, because I didn't have his report at the time.

And then he had not removed the spinal cord, which I did on page eleven, and then there was a focal subdural hemorrhage, which is overlying the spinal cord down at the base where the cord ends and goes out into strands called cauda equina; tail of a horse. So there was some hemorrhage there and that extended for about seven centimeters; a little less than three inches.

So I did find evidence of hemorrhage in the structures of the back, which, as you said before correctly, are not observable

externally, but which are found internally. And then when you cut into the spinal canal with an electric saw, then additional hemorrhages were noted which Dr. Shakir could not have seen because the spinal cord was not removed.

Q. And the pathological explanations for that hemorrhaging that you saw in the area that you saw it include what?

A. In my opinion, it would be pressure applied to the back. I think that if they were from punches, it would be hard, if not impossible, to do that without getting some bruising on the skin. So I think, therefore, it's more a matter of pressure, which is disseminated.

You see, the smaller the area in which an injury occur, obviously, the greater concentration of force at that area. The broader it becomes, the more spread out, the more diffuse are the lines of force. So I would say that these findings are consistent with pressure rather than punches or blows.

Q. And you found these in the low back?

A. The lower thoracic into the lumbar region, yes.

Q. Belt level of an individual?

question about what you just said?
A. Sure, sure.
Q. Are you suggesting that this subperiosteal hemorrhage of the sphenoid ridge is diagnostic of asphyxiation or consistent with?
A. I'd say consistent with. By itself I would not make a diagnosis, but it would be a finding that is consistent with and supportive of an asphyxial kind of situation.
Q. Now, you said page 14.
A. Yeah, if you look under Penis, the very last paragraph of my report, this really addresses the question you had asked about pressure. This was an extensive, bright red, fresh hemorrhage extending from the dorsal, which is the top of the penis, ventral, the undersurface, more than half the length from the base; in other words, where the penile shaft emerges from its attachment to the abdominal area above and the scrotal sac beneath.

In order to get that kind of hemorrhage on both the top and the bottom, that had to have required a substantial amount of force being applied to this man as he lay in a

prone position. And just think how many times -- going back to our football scenario, going back to other situations of people piling on and so on, when did you ever hear of somebody's penis being injured? I'm not telling you it can't happen, but it sure is a darn rare thing.

Q. That's probably something the announcers don't say on national TV.

A. I guess they wear cups, but anyway, in this case this is a very significant finding which can only be seen when the penis is cut into. And that clearly comes from pressure. There's no other way that that injury could have been sustained, in my opinion, other than from significant pressure being applied down in the lower back; the penis obviously being trapped by virtue of its anatomic location and the pressure then going on through the lower abdominal cavity out onto the penis.

Q. And, at least as far as my anatomical form is concerned, if I'm laying prone, my suggestion to you -- you tell me if I'm right or wrong -- that this finding that you're detailing now on page 14 would suggest pressure in the buttocks

Q. Now, let's talk about the effect, if any, of this man's level of cocaine in his body at the time of this incident. You indicate in your report acute cocaine toxicity. That's in your autopsy, I'm sorry.

A. Yes.

Q. What does that mean?

A. It means that there's evidence that he had used cocaine within a matter of a few hours prior to his death.

Q. Now, do you have an opinion as to whether the ingestion of that cocaine a few hours prior to his death had anything to do with his death?

A. I can't be sure. The level is quite low. The level is just actually about one-tenth of the average level reported in the top textbook of forensic toxicology, Baselt, B-A-S-E-L-T, as the average amount reported in their fatalities. And it's just a little bit more than half of the lowest report that they include -- a very, very, ride range, but it's just about one-tenth of the average found in the blood. So it's a quite low level.

I also understand that this man had used cocaine before, and as we all know,